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ABSTRACT

Most states require compulsory attendance of students through age 16. Challenges to the compulsory attendance laws often derive from disputes between parents and school officials over home instruction. This paper reviews prominent court cases that address legal issues pertaining to home schooling. The landmark case of "Pierce v. Society of Sisters" (1925) clearly established the right to send children to private, rather than public, schools. Since then, many states have addressed the issue of home education and most of the courts have held that home schooling does not constitute a private school. While many of the litigants have sought exemption from compulsory attendance on religious grounds, others have done so for educational reasons, and in a few of these cases, parents have prevailed. Nevertheless, in more recent cases of this type, parents have failed to convince the courts to grant them exemptions. These cases collectively suggest that parents have the right to control the education of their child, while the state has the obligation to force the parents to accept this responsibility. (TE)

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COMPULSORY ATTENDANCE

vs.

HOME INSTRUCTION

by

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Compulsory Attendance vs. Home Instruction

Texas as most states requires compulsory attendance of students through age 16. Challenges to the compulsory attendance laws often emanate from disputes between parents and school officials over home instruction. Does a home school meet the test of compulsory attendance? At what point may the state compel the parents to fulfill their duty to educate their child and at what point must the state give way to the free exercise clause of the First Amendment and/or the fundamental rights of individuals to educate their child at home?

Generally, the law is well established that the state may reasonably regulate private schools. Perhaps the fundamental question is what is a school? Is it a process or is it certification, time, specific skills, et. al? In addition, to what extent does the state want to be entangled with the oversight of these "schools".

The landmark case of Pierce v. Society of Sisters in 1925 clearly defined the role of the parent in education. The case involved private schools' challenging an Oregon statute requiring all children to attend public schools. The court declared that the statue "unreasonably interferes with the liberty of parents...to direct the upbringing and education of children under their control. The child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to

recognize and prepare him for additional obligations."[1]

Stephens v. Bongart (1937) and State v. Massa (1967) were two cases in New Jersey that challenged the compulsory education law, although the decisions were handed down thirty years apart. In the Stephens case, the court addressed the issue whether the statute required social as well as academic equivalency in educating children. The court held that "equivalent education elsewhere than at school" did not extend to educating a child at home. In addition, the father of the family was viewed as a "trustee of a child's education for the state." The state was seen as responsible for the instilling of worthy habits and attitudes, appreciation and skills, including socializing a child which the court felt could only be done in an institutional setting."[2] However, in State v. Massa (1967) the courts overruled the previous decision stating:

> Every parent, guardian or other person having custody and control of a child between the ages of 6 and 16 years shall cause such child regularly to attend the public schools of the district or a day school in which there is given instruction equivalent to that provided in the public schools for children of similar grades and attainments or to receive equivalent instruction elsewhere than at school.[3]

Perhaps the most influential case to the home schooling issue was Wisconsin v. Yoder in 1972. The Supreme Court required exemption from the entire education program beyond

the eighth grade Amish families with strong religious objections to public schooling. The families accepted compulsory attendance in the lower grades, believing that their children should learn basic skills. However, they objected to the lack of Amish values in the public school program. The court held that as applied to these people, Wisconsin's compulsory attendance law was unconstitutional. Although this holding does not affect state compulsory attendance laws generally, Yoder holds that "the state can not compel attendance of children in the face of strong religious objections where the state's interest in the education of the child is adequately served by an alternative program."[4]

In addition, the court was careful to distinguish between philosophical and religious objections to formal schooling:

> If the Amish asserted their claims because of their subjective evaluation and rejection of the contemporary secular values accepted by the majority, much as Thoreau rejected the social values of his time and isolated himself at Walden Pond, their claim would not rest on a religious basis. Thoreau's choice was philosophical and personal rather than religious, and such belief does not rise to the demands of the Religion Clauses.[5]

After the Yoder case, courts began to look for violations of the free exercise clause by finding a "burden placed on a sincere religious belief." If there is no burden, or if the belief in insignificant, if the belief is philosophical,

political, or social, or if it is not sincerely held, no further analysis is necessary.[6] However, if required elements are there, then the courts must consider whether the state "has a sufficiently compelling justification for its rules, and whether it has chosen the 'least restrictive means' of achieving its goals." In other words, the courts must balance the interest of the individual in the free exercise of religion against the interest of the state in an educated citizenry.[7]

Many states since have addressed the issue of home education and most of the courts have held that home schooling does not constitute a private school. In People v. Levinson, however, the Illinois Supreme Court upheld the parental right to instruct one's child at home when the Levinsons were convicted of violating an Illinois statute which required parents to either send their children to public or private school because they had chosen to educate their child at home. The Court concluded that the Levinsons's child was being educated in a private school, although the child was receiving instruction at home. The Court reasoned: "The law is not made to punish those who provide their children with instruction equal or superior to that obtainable in public schools. It is made for the parent who fails or refuses to properly educate his child."[8]

However, in Scoma v. Board of Education (1977), parents unsuccessfully attacked the Illinois compulsory attendance statute, charging "that the state violated the fourteenth

amendment of the United States Constitution and specifically ignored the constitutional right of parents to direct the education of their children." In the Scoma case the parents did not base their challenge on their religious belief as did the parents in the Yoder case, but rather they claimed that they had a right to educate their children as "they see fit." The Court did not consider the plaintiff's claim to be within the scope of protection of the constitution, but rather it found that the statute served a legitimate state purpose and that the law did not deny the parents equal protection.[9]

In State v. Riddle (1981) in West Virginia, Jernigan v. State (1981) in Alabama, and State v. Shaver (1980) in North Dakota, parents all felt that they should be able to educate their children at home due to religious reasons. However, in all three cases the Courts ruled in favor of the State. In the Alabama case the parents had alleged only the possibility of harm to their religious belief and in the North Dakota case, the Court found that the parents' religious beliefs did not necessarily require home instruction. While West Virginia allowed home instruction, participants had to follow guidelines and report the structure of their home instruction program. The Riddles felt that their religious beliefs freed them from any obligation to report to the state. However, the state held that the Riddles were still subject to state supervision.[10]

Sometimes parents seek excusal from compulsory attendance laws for educational reasons rather than religious reasons.

In a few of these cases, parents have prevailed. In a Massachusetts case, Perchemlides v. Frizzle (1978), the court recognized a basic parental right at stake and held that the state could neither require parents to be certified, nor to provide a curriculum identical to the public schools. In the case of In re Skipwith (1958), the domestic relations court of New York City permitted a white child to stay home because of the parent's philosophical objections to the quality of education available at a predominantly black school. In Dobbins v. Commonwealth (1957), a Virginia Court held that a compulsory attendance law could not be used to require a black child to attend a distant black school when there was a nearby white school that he wanted to attend.

However, in more recent cases of this type, parents have failed to convince the courts to grant them exemptions. City of Akron v. Lane resulted in the conviction of Richard Lane under Ohio's compulsory attendance law when Lane withdrew his hearing impaired child from school because he became dissatisfied with the school's handling of his child's education. When the superintendent refused to approve the home instructional program, he was prosecuted for a violation of the attendance laws. In 1980, when parents expressed philosophical and educational reasons for preferring home instruction, the State of Michigan took them to court. In Hanson v. Cushman, a federal district court rejected their pleas that the Michigan compulsory attendance law be found unconstitutional.[11]

In 1987, a Texas trial judge held that home instruction meets the definition of a "Private or Parochial School" under the Texas Education Code, Section 21.033 (a) (1). In Leeper v. Arlington Independent School District, a declaratory judgment was issued finding section 21.033 (a) (1) to include home instruction and thus not in violation of Texas compulsory attendance laws.[12]

Theodore W. Schultz won a Nobel Prize for Economic Science in the 1960's by recognizing the economic importance of the human being in the production process. He began to seek ways to measure human capital.[13]

It seems evident that parents have the right to control the education of their child and the state has the obligation to force the parents to accept this responsibility.

Home Instruction -- is it a school? Well, that depends on how a state reasonably defines a school. One thing is certain, humans have economic importance to the state and the state must see that the potential in children is developed.

NOTES

[1]Suzanne Buchanan, "Evolution of Parental Rights in Education," Journal of Law and Education, (summer, 1987) 344.

[2]Buchanan, 342.

[3]Michael W. LaMorte, School Law Cases and Concepts, (New Jersey: Prentice Hall, Inc., 1982), 29.

[4]Patricia Lines, "Private Education; Alternatives and State Regulations," Journal of Law and Education, (April 1983) 200.

[5]Lines, 200.

[6]Lines, 201.

[7]Lines, 201.

[8]Buchanan, 347.

[9]Buchanan, 347.

[10]Lines, 207.

[11]Lines, 208.

[12]Ralph D. Mawdsley, "Leeper v. Arlington Independent School District," NOLPE, (May 1987) 6.

[13]Theodore W. Schultz, "Investment in Human Capital," American Economic Review, 51 (March 1961), 1-17.